

**WORK SESSION
OF THE BRIGHAM CITY COUNCIL
TO DISCUSS THE CITY'S PARTICIPATION IN
UTAH INFRASTRUCTURE AGENCY (UIA) FUNDING
OCTOBER 19, 2010
12:00 P.M.**

PRESENT:	Dennis Fife	Mayor
	Bruce Christensen	Councilmember
	Scott Ericson	Councilmember
	Ruth Jensen	Councilmember
	Bob Marabella	Councilmember
	Tyler Vincent	Councilmember

ALSO PRESENT:	Mary Kate Christensen	City Recorder
	Bruce Leonard	City Administrator
	Jason Roberts	Finance Director

Percent of Risk Calculation

Mr. Leonard explained that the UIA Board has given the City the amount of Brigham City's participation and bonding costs. The Board talked about .93%. With Tremonton and Perry City not being part of the UIA, that percentage changed. Mr. Roberts said with Perry and Tremonton's combined original participation, percentages were 3.34%. UIA has proposed that this be split evenly over the other member cities. Brigham City's percentage would be 3.35% of that percentage, or .11%. They proposed that the City's revised pledge percentage increase to 3.46%. This does not mean that Brigham City will be paying 3.46% of the bond. The biggest issue is that Brigham City's voting percentage would increase to 3.46% and if there were any excess revenue distributions the City would receive 3.46% of that. The total projected bond is \$61,505,000. This would include \$10,679,476 for operations and \$50,825,524 for construction. UIA is proposing that if the City participates in 3.46% of the operations cost, Brigham City's participation would be \$369,194. This is .6% of the total bonds.

Mr. Roberts continued that UIA had a consulting firm do a feasibility study based on UIA's model. If they can get the take rates that are in the model at the pricing projected, they will be making money to offset the tax pledges at the end of the five years, and never have to draw on the \$60 million bond. Mr. Leonard added that UIA has stated that they will look at the first \$20 million and if the model was not working they will not go forward. If that is the case, the participation would be 1/3 of the \$369,194.

Councilmember Christensen said he did not see anything in the contract about service providers. It almost looks like they provide the wholesale and Brigham City provides the service. Mr. Leonard explained that the agreement just guarantees the bond funding. Councilmember Christensen said the agreement references what will happen in regards to construction and build outs. But it does not say anything about providers coming in and marketing once the service is installed. It doesn't say who will do the marketing. Mr. Leonard said he is not sure if this is the document that would be represented in or not. Councilmember Christensen said it appears UIA is trying to operate parallel with what UTOPIA has been doing. Mayor Fife explained that the agreement states that UIA is not a provider under the Telecommunications Act. They are the facilitator for the construction.

Councilmember Jensen asked how much they want to charge for connections. Mayor Fife stated that UTOPIA would like Brigham City to charge \$3,000 for each additional hook up. The agreements state that UTOPIA will get 95% of that and Brigham City will get 5%. He did not feel that they should get 95% in Brigham City because the City has paid to put in a large portion of the 1,800 connections. Councilmember Ericson said if the City is reducing the amount based on participation, will there be the same benefit when the fees come in, or is the participation based on the .6% instead of the 3.34%? Mr. Roberts replied that UIA staff has indicated that part of the City getting down to .6% is taking into account the City's participation in the bond. The Mayor explained that the analysis the City looked at was based on the total, including the other phase. This came up to .52%. If it were figured on the \$60 million, Brigham City would not be contributing anything. Councilmember Ericson cautioned that there is a limit on how much the City can ask them to reduce before counting it multiple times. Mayor Fife said this is just for Brigham City to participate in operations. If UIA put money back into Brigham City their cost is \$1,200 per connection but they want the City to charge the full \$3,000. Councilmember Ericson said he agreed with that, but was concerned that the people that sign up

through the UIA and Brigham City takes their money, that 5% stays in the City. Mayor Fife explained that the 5% is for administration fees. He felt that the City should be paid back for the gap analysis that the City did. Mr. Roberts said there are multiple ways the money could come back to Brigham City. It could be taken from a customer payment or UIA could pay the City back for the use of the network. Councilmember Marabella said the discussion when the Council agreed to pay to get bring fiber optics everywhere in Brigham City was that when additional people signed up, \$1,800 of the connection fee was supposed to go to the City to pay back that expense.

Councilmember Jensen asked if there is anything in the contract that states the money the City has given to UIA, including services charges, membership dues, franchise tax, will be paid back to the City within a certain amount of time. Mr. Roberts replied that the contract states that the City will be reimbursed out of bond proceeds for any working capital contributions. It does not say the City will be reimbursed for any assessments. UIA is anticipating that assessments and working capital contributions will cease once the bonds are issued. Mr. Leonard said he did not understand that the dues will end. He thought the capital assessment will be reimbursed, but the dues will be ongoing.

Councilmember Jensen said she looks at UTOPIA and UIA as business partners. UTOPIA is in the red and UIA is trying to run on nothing but a model. They are trying to squeeze as much money as possible from the people. Even though they say they are going to return the money or they are not going to collect on bonds, she does not believe them. If this was our personal business, would we go further into a business venture with people who are in the red and have not guaranteed anything? She agreed that .6% does not sound like a lot, but it is. The City is allowing them to keep rooting themselves around the City. It will not end.

Councilmember Marabella said if someone bought a \$50,000 boat and takes it out one time and something goes wrong and it will cost \$1,500 to fix it, that person would pay \$1,500 to fix it. If the transmission goes out and it will cost \$5,000 to fix it, would they fix it at that point? They have \$51,500 invested in the purchase. Councilmember Jensen said if she would have purchased a \$50,000 boat, she would have made sure it was \$50,000 worth of value. Councilmember Marabella said the City cannot go back. The City has an investment, and Councilmember Jensen is saying that she is giving up and just wants the City to make the payment for the next 28 years. Councilmember Jensen said the City is going to make that payment no matter what. It is just a matter of how much that payment will be.

Councilmember Vincent said he looks at it like insurance. People pay into insurance for years and think it's for nothing, until they get in an accident, then they are glad they have it. He agreed with Councilmember Jensen that there are a lot of things with UTOPIA that he does not trust, however, where does the City draw the line?

Councilmember Jensen said she can remember in a previous Council meeting asking the Council how far the City will go. The Council promised that if Brigham City did not reach a 35% take rate there would be no more money into it. The City has only reached 27%. When is it going to stop? The City has to have a ceiling for the budget and for capital projects. There should be a ceiling for this venture as well. Councilmember Ericson said there are too many variables to pin down a number. If the City stops now, the City will continue to pay the pledge payment for the next 28 years and have 1,500 residents that are connected that may not have the service any more. Councilmember Jensen said she is not suggesting that. The City needs to stay at the same amount, or go as low as possible on the percentage. The City has invested enough and UTOPIA has been successful because of Brigham City. Councilmember Marabella said the Mayor, Mr. Leonard and Mr. Roberts have negotiated the participation percentage from 3.36 to .6%. Councilmember Jensen felt the City should pay the dues only. Councilmember Christensen said the participation fee and the membership dues are two different things. This is a pledge for a bond and no money is being paid at this point. The decision is how much the City is willing to back up the bond. Going from 3.46% to .6% is getting it as low as possible. UIA would not agree to anything else.

Mr. Leonard said the Council can instruct staff to go back to the UIA Board and tell them the City is not going to participate. If that happens, UIA will not enter into the agreement with Brigham City. Brigham City will not be a member of the UIA and they will go forward. Brigham City will just deal with UTOPIA and will lose any revenues that come back. The only thing he felt the City could negotiate further is to argue if there is a split

on the connection fee, and he and Mr. Roberts have been doing that for the last two weeks without any progress.

Councilmember Christensen asked whether it has been clarified that UIA is going into the market to do \$20 million on the first tranche, then if things are successful they will go for the next \$20 million, then the next. Mr. Leonard replied that that is their plan. Councilmember Ericson asked if it will come back to the Council when it is time to go out for the next \$20 million. Mr. Leonard stated that the UIA Board would make the decision to prepare the documents to come back to the councils.

Mayor Fife said the only thing the City is committing at this time is the \$31,831 pledge over 20 years, or approximately \$3,000 per year.

Mayor Fife said everyone has the same frustrations. He has a lot of mixed feelings about it. The first analysis he pushed was that Brigham City has already participated as much as needed. However, like anything else, this has to be negotiated and they took an approach on the amount of operating expenses. He felt that a .6% participation is reasonable. Other issues that need to be addressed are the dues, working capital and the RUS amounts. He felt the City should join RUS and commit the .6%, but until they can get the 150 people worked out that puts the City in a position on the current bond, which creates cash flow issues, the City should tell them the dues and working capital cannot be paid. In addition, there are 150 more citizens that have not paid anything on their assessment in the first three months. Another concern is the quality of service that users are getting. They have to fix this issue. There is also concern with the competition, because they have lowered their rates drastically. This means UTOPIA cannot be as competitive as they had planned. Councilmember Christensen added that the competition is large enough they can do a loss program for a year. At the end of the first year, resident's rates will double.

The Mayor said he looks at this .6% as insurance, as Councilmember Vincent mentioned. If it is successful the City will be paid back. If it is not successful the City will have another commitment. Councilmember Christensen said if it is not going to be successful, it will be known in the first tranche. A lot of the first \$20 million is going toward the RUS lawsuit and operations. There is only about half of it that will go toward construction.

Service Contract

Mayor Fife asked the Council if they wanted to force the issue with the 60/40 split in the service contract. Councilmember Ericson recommended getting as much as possible. He did not think the City would get 60%, but maybe 30%. Councilmember Christensen agreed. Councilmember Marabella recommended calling it a processing fee and trying to ease the percentage up. Mayor Fife felt that the City should try for 60/40 of the \$1,800 from the connection fee. There is a 5% administration fee for everyone. They will give \$1,200 of the \$3,000 connection fee to Brigham City for each connection. Mr. Leonard did not feel that the Board will recognize any contribution back on the \$1,800 service connection. If the Council passes the service contract agreement with that amendment, he did not think they will accept it and will continue forward without Brigham City as a participant. Mayor Fife disagreed, stating that the City should push the issue. He felt UIA wants Brigham City as a member. Councilmember Christensen said that was the original agreement, that Brigham City would get money back as new people connected. He felt the City should try, because the City needs to recover those funds. Mr. Leonard will try to negotiate this point with them.

Invoices Received for Dues and Working Capital Assessment

Councilmember Christensen said he and Councilmember Jensen are on the panel to review citizens' concerns with the SAA. There is no doubt that there has been fraud by the salespeople. Councilmember Marabella suggested in lieu of dues the City ask for a reprieve until the concerns of 150 people can be resolved because Brigham City is responsible for the bond payments of these individuals if they are let out of their SAA. This could be close to \$1 million. Councilmember Christensen added that this is not Brigham City's fault, it was UTOPIA's salespeople. He suggested the minutes of the UTOPIA panel meetings be forwarded to UTOPIA. The Council agreed that no dues will be paid until things are resolved with the SAA.

Rural Utility Services (RUS) Litigation Funding

Councilmember Ericson said if the City agrees to .6%, funding for the RUS litigation is in that amount. Mr. Leonard said they did some pre-mediation work and Brigham City's assessment for that was approximately \$9,000. Brigham City was the only member City that did not pay.

The meeting adjourned at 1:37 p.m.